

wireless interveners, including PCIA. Based on this record, the Eighth Circuit upheld the LEC/CMRS interconnection rules without singling the paging companies out for separate, disparate treatment.<sup>51</sup>

**38. Is the entitlement of paging carriers to receive reciprocal compensation still at issue at the Commission?**

Yes, but the Commission should not disturb the prior rulings which have been upheld on appeal. When the Local Competition First Report was adopted, some parties filed petitions for reconsideration at the FCC challenging the entitlement of paging carriers to receive reciprocal compensation.<sup>52</sup> The Mid-Sized Incumbent LECs raised the same issue in a court challenge. The reconsideration petitions remained pending before the Commission without action while the court challenges were adjudicated in the Eighth Circuit. Since the Eighth Circuit did not disturb the finding that paging carriers are entitled to compensation, the Commission may affirm this conclusion on reconsideration with confidence that its ruling will be upheld. In contrast, altering the decision risks snatching defeat from the jaws of victory.

**39. Are paging companies seeking terminating compensation payments sufficient to recover the costs of their entire radio frequency ("RF") network?**

No. The Commission has ruled that terminating compensation payments should be calculated to enable the terminating carrier to recoup its usage-sensitive network costs. Fixed-costs associated with the terminating carrier's "local loop" are to be recovered from the terminating carrier's customers through basic service access fees. State commissions have ruled consistently with this principle.

Two parties benefit from the completion of a page: (1) the person who initiates the page, and (2) the person who receives it. It is therefore appropriate to have each pay a portion of the costs associated with a paging communication. Consequently, the FCC's rules require that the originator pay for the transport and termination of a call, which includes delivery of the page to the end office (or functional equivalent thereof) and switching of the call. The called party pays for the "local loop" to terminate the call. FCC decisions support the view that the "wireless local loop" in the one-way paging context should be the portion of the paging network after the last point of switching and call disaggregation. Using this definition, the

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<sup>51/</sup>Iowa Utilities Board v. FCC, 120 F. 3d 753 at n. 21.

<sup>52/</sup>See, e.g., Petitions for Reconsideration of Kalida Telephone Company and the Local Exchange Carrier Coalition in CC Docket No. 96-98 as listed at 61 Fed. Reg. 53, 922 (1996).

radio frequency (rf) system (e.g., the towers, transmitters, receivers and other rf infrastructure) would be considered part of the local loop and the costs of these components would not be included in a calculation of a compensation rate. Notably, most of the network costs are tied up in the local loop, which means that the paging customer is paying the vast majority of the total expenses associated with the completion of a page.

**40. Who should be the arbiter of the terminating compensation rates charged to LECs by paging service providers - - the FCC or state PUCs?**

The FCC. Section 332(c)(3) of the Communications Act provides that “no state or local government shall have any authority to regulate...the rates charged by any commercial mobile service” provider. A paging terminating compensation rate is a rate charged by a CMRS provider, and should be deemed within the exclusive jurisdiction of the FCC. Several public policy considerations compel the conclusion that the FCC should fully exercise its jurisdiction in this regard. First, certain state commission decisions with respect to paging compensation have proven to be inconsistent with federal requirements,<sup>53</sup> which may reflect the fact that state commissions have little familiarity with or expertise concerning paging. Second, experience indicates that LECs are seeking to exploit the current scheme by refusing to engage in system-wide interconnection discussions and forcing paging companies to undergo multiple proceedings in multiple states. This not only increases the costs and delays associated with getting agreements in place, but also increases the risk of inconsistent decisions.<sup>54</sup> Third, creating a federal forum will facilitate the development of national standards which are sorely needed since paging carriers do not now get the benefit of the proxy rate or symmetrical rate enjoyed by other CMRS carriers with which paging companies compete.

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<sup>53</sup>Petition of AirTouch Paging, Inc. for Arbitration of an Interconnection Agreement with US WEST Communications, Inc. Pursuant to 47 U.S.C. §252, Docket No. 99A-001T, Decision Regarding Petition for Arbitration (CO PUC 1999) (“AirTouch Colorado Decision”).

<sup>54</sup>Compare AirTouch Colorado Decision with AirTouch Washington Decision

- 41. Should a paging service provider be obligated to file a formal request for a new or modified interconnection agreement pursuant to Section 251 of the Communications Act, and be subject to the negotiation, mediation and arbitration procedures of Section 252, as a precondition to being paid terminating compensation?**

No. The obligation of LECs to interconnect with paging carriers arises not just out of Sections 251 and 252, but also out of Sections 201, 202 and 332 of the Communications Act. Notably, the Commission adopted rule Section 20.11(b)(1), which requires LECs to pay reasonable compensation to a CMRS provider which terminates LEC-originated traffic, prior to the adoption of Sections 251 and 252 of the 1996 Act. Thus, formal negotiations under Sections 251 and 252 should be viewed as one avenue a paging company can pursue, but not the exclusive avenue.

### **VIII. Section 252(i) Most-Favored-Nation ("MFN") Rights**

- 42. Do paging carriers have an alternative to voluntarily negotiating or arbitrating an interconnection agreement?**

Yes. Section 252(i) requires that LECs make available any interconnection, service or network element contained in a previously approved agreement to another requesting carrier on the same terms and conditions as the original agreement. Thus, paging carriers can adopt another carrier's agreement in whole or in part in lieu of negotiating or arbitrating their own agreement. Rights conferred by Section 252(i) are commonly referred to as "most favored nations" ("MFN") rights.

- 43. Can paging carriers invoke the right to opt into terms from another approved interconnection agreement during the term of their existing interconnection agreement?**

Yes. The Commission and multiple state commissions have confirmed that a requesting carrier can invoke the MFN rights of Section 252(i) to modify the terms of an existing agreement.

- 44. If disputes arise concerning the nature and extent of a requesting carrier's rights under Section 252(i), must these disputes be taken to the state PUC, and must a carrier wait until the 135 to 160 day arbitration window opens before going to the state?**

No. Complaints concerning violations of Section 252(i) can be filed directly in the federal district court or at the FCC.<sup>55</sup> Even if a requesting carrier opts to go to the state PUC for a ruling concerning its Section 252(i) rights, it need not wait 135 days, since the filing window pertains to agreements negotiated under Section 252(a) and arbitrated under Section 252(b), not to agreements adopted under Section 252(i).

- 45. Can the term of an agreement adopted pursuant to Section 252(i) of the 1996 Act extend beyond the initial term of the approved agreement upon which the Most-Favored-Nation request is based?**

Yes. Absent changed circumstances, a LEC should be obligated to offer a requesting carrier an agreement that accords the requesting carrier the same economic benefit as was enjoyed by the original party to the agreement. This may result in an agreement that has an end date later than that specified in the original approved agreement.

- 46. If an agreement adopted pursuant to Section 252(i) is allowed to extend beyond the term of the approved agreement, isn't a "daisy chain" created in which a series of successive Section 252(i) requests can act to perpetuate a single agreement forever?**

No. A Section 252(i) MFN request can only be made based upon an agreement approved by the state commission under Section 252(e) of the Act. Section 252(e) only requires approval of agreements adopted by negotiation (*i.e.*, those arising under Section 252(a)) or by arbitration (*i.e.*, those arising under Section 252(b)); not adopted agreements (*i.e.*, those arising under Section 252(i)). So, MFN agreements themselves are not subject to approval under Section 252(e) and thus cannot form a link in the so-called "daisy chain."

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<sup>55</sup>AirTouch Paging v. Pacific Bell, Case No. 3:98-CV-02216 MHP, Memorandum and Order (N.D. CA. 1999).

- 47. Is the terminating compensation rate that a LEC agrees to pay a paging carrier an “interconnection, service or network element” which is subject to a Section 252(i) MFN request?**

Yes. The terminating compensation rate paid by the LEC to the paging carrier is an integral part of the overall reciprocal compensation arrangement arising out of the interconnection relationship.

The inclusion of reciprocal compensation provisions within the scope of Section 252(i) is apparent from the Local Competition First Report. The portion of the order discussing Section 252(i) and adopting Section 51.809 of the rules reflects that the Commission has interpreted Section 252(i) as permitting the adoption of any provision within a previously approved agreement *or the adoption of the agreement in its entirety*. By this all-inclusive interpretation, the Commission intended that all provisions of an interconnection agreement, including those pertaining to reciprocal compensation, would be subject to the rights conferred by Section 252(i). The right to adopt an interconnection agreement *in toto* was upheld both at the Eighth Circuit and the Supreme Court.

## **IX. Point of Interface Between the LEC and Paging Networks**

- 48. How is the point of connection (“POC”) or point of interface (“POI”) between a LEC and a paging company determined?**

Historically, LECs dictated the location of the POC or POI, and generally required that it be located at the paging company switch, while insisting that the paging company pay for the connecting facilities utilized to deliver the traffic all the way to that location.<sup>56</sup> Under the new interconnection paradigm, the paging company should be able to select the POI or POC at any technically feasible location, including at the paging company switch if desired.

- 49. If LECs are obligated to deliver their paging traffic to the POI with the paging service provider without charge, doesn’t this mean that paging companies are getting “free” service?**

No. It is commonplace for the originator of a communication to pay the traffic-sensitive costs associated with delivering the call. When a telephone customer picks up a landline telephone

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<sup>56/</sup>Standard Bellcore interconnection schematic drawings confirm that the POC or POI is considered by the LECs to be at the paging company switch.

to initiate a page, that person is the originator of the call, and is properly charged (through a cost-based local access phone rate) for delivering the call. The paging company is not getting “free” service, but rather is being relieved of the unfair burden of paying charges that are properly borne by the customer of the originating carrier.

- 50. Assuming no other changes in the interconnection arrangement, what is the financial consequence of moving the POI from one location to another (e.g. from the paging switch to the LEC end office)?**

In a perfect world, there would be no practical difference. With the POI at the paging switch, the LEC would be obligated to pick up the cost of the connecting facility used to deliver local LEC-originated traffic to the paging company. With the POI at the LEC end office, the paging carrier would be obligated to pick up the cost of the connecting facility to the paging switch but would be entitled to recoup this cost through terminating compensation payments.

- 51. If the POI is located at the paging carrier’s switch, should compensation be denied because the paging carrier is performing termination functions, but no transport functions?**

No. Telecommunications carriers are entitled to be compensated for transport and termination, but there is no requirement and no compelling reason that a particular call must be both transported and terminated by the terminating carrier in order for the entitlement to compensation to arise.<sup>57</sup> Indeed, Section 20.11(a)(1) of the rules makes clear that CMRS carriers are entitled to compensation for terminating traffic and makes no reference at all to transport. Whether the POI is located one mile from the paging switch or at the paging switch may properly affect the amount of compensation that is due, but does not affect the basic entitlement to payment.

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<sup>57</sup>In the Cook Telecom proceeding, the California Public Utilities Commission found that Cook (a paging service provider) was not entitled to compensation for transport because it did not provide the facilities used to deliver LEC-originated traffic to its paging switch, but nor should Cook be charged for that transport. In that same order, the PUC also found that Cook is entitled to compensation for the termination of local LEC-originated telecommunications. See Application of Cook Telecom, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Arrangement with Pacific Bell, Application No. 97-02-003, Decision 97-05-095, (Cal. PUC 1997) (Interim Decision).

- 52. Should an end-to-end paging message be considered, for regulatory purposes, as two distinct calls: one call originating at the landline phone which initiates the page and terminating at the paging switch, and a second call originating at the paging switch and terminating at the paging unit?**

No. An end-to-end communication path is established when the paging message is accepted. While the message may be placed in storage for delivery in sequence with other pages, this is not done unless and until the page is validated and the availability of the transmission path to the paging customer's service area is verified. And the storage is an automated call processing function the sole purpose of which is to facilitate completion of the transmission, not to provide any enhanced service. In other similar contexts, the FCC properly has recognized that call processing mechanisms used in connection with basic services are properly viewed as "adjunct to basic" services that are not deemed to alter the character of the service.<sup>58</sup>

The fact that a call must be classified based upon the nature of the end-to-end communication has been upheld in other contexts as well. For example, the FCC specifically rejected the "two-call" theory when it ruled that calls placed using debit calling cards which originate and terminate in the same state are intrastate calls, even though such calls had two components: one interstate communication via an 800 number to a remote switch and a second communication back to the state from the remote switch location.<sup>59</sup> More recently, the FCC found that internet-bound calls constitute "one call," and should be viewed on an end-to-end basis without reference to intermediate switching or routing points.<sup>60</sup>

Moreover, a paging network could be configured to establish a real-time, end-to-end connection between the calling party and the paging unit. However, this configuration would be much less efficient than using the sophisticated store and forward switching techniques that are now available. The Commission should not adopt regulatory treatments that discourage

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<sup>58</sup>/NATA Centrex Order, 101 FCC 2d 349 (1985), recon., 3 FCC Rcd. 4385 (1988).

<sup>59</sup>/Time Machine, Inc., Request for Declaratory Ruling Concerning Preemption of State Regulations of Interstate 800-Access Debit Card Telecommunications Services, 11 FCC Rcd. 1186 (CCB 1995).

<sup>60</sup>/Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 1999 FCC LEXIS 821 (1999).

the use of state-of-the-art technology. Rather, the Commission should recognize the equivalence of a modern page to other end-to-end calls.

- 53. Is a real-time connection between the calling party and the called party necessary in order for the terminating carrier to be deemed to have performed a “switching” function?**

No. While some definitions of switching refer to making a “connection” between the calling and called party, there is no requirement that this connection be instantaneous or be accomplished in real time. Nor is there any reason to consider a real time connection as a necessary component of switching. State utility commission decisions confirm that real time connections are not required.<sup>61</sup>

## **X. Competitive Neutrality Between One-Way and Two-Way Service Providers**

- 54. Are paging companies entitled to the same terminating compensation payments as two-way service providers who are providing paging as an integrated component of their service offerings?**

They should be, but unfortunately the Commission’s rulings have not achieved this result. In the Local Competition First Report, the Commission tentatively concluded that paging network architecture was sufficiently different from LEC network architecture to disallow paging companies from relying upon the LECs’ cost-based termination rates as a surrogate.<sup>62</sup> In contrast, two-way CMRS providers were granted the right to be paid a rate symmetrical to the rate charged them by the LEC. Ultimately, the FCC rule that singled paging companies

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<sup>61</sup>See, Petition for Arbitration of an Interconnection Agreement Between AirTouch Paging and US WEST Communications, Inc., Docket No. UT-990300 (WA UTC 1999) (Arbitrator’s Report and Decision); Petition of AirTouch Paging, Inc. for Arbitration of an Interconnection Agreement with US WEST Communications, Inc., Docket No. 99A-001T, Decision No. C99-419 (CO PUC 1999) (Decision Regarding Petition for Arbitration); Application of Cook Telecom, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Arrangement with Pacific Bell, Application No. 97-02-003 (Cal. PUC 1997) (Interim Decision).

<sup>62</sup>47 C.F.R. § 51.711(c).



out for disparate treatment was vacated by the Eighth Circuit,<sup>63</sup> but most LECs are, nonetheless, declining to offer one-way carriers the same symmetrical rate offered to two-way carriers.

- 55. Was the Commission correct in determining that paging company networks are sufficiently different from the networks of two-way CMRS and other telecommunications carriers to warrant separate consideration in terms of the basis for determining compensation?<sup>64</sup>**

No. Paging networks consist of similar components, perform similar functions and have similar architectures to other telecommunications networks. Moreover, while the FCC decided that it did not have sufficient information before it to conclude that paging termination costs are comparable to the termination costs of other carriers, in the period of time since the Local Competition First Report was issued, new information has become available which supports the conclusion that paging companies should get the same symmetrical terminating compensation rate that is offered to other CMRS carriers. For example, Ameritech, BellSouth, Bell Atlantic and Sprint have reached voluntary agreements with paging carriers in which the paging carrier is paid terminating compensation comparable to that paid other CMRS carriers.<sup>65</sup> And the Washington Utilities and Transportation Commission has found, after a full evidentiary hearing, that the LEC end office compensation rate provides a reasonable surrogate for establishing a paging terminating rate.<sup>66</sup> These developments support the view that paging carriers should be paid terminating compensation comparable to that received by other telecommunications carriers without being singled out to prove their own TELRIC costs.

- 56. Are there any negative competitive implications of treating paging terminating compensation differently from other CMRS terminating compensation?**

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<sup>63</sup>/Iowa Utilities Board v. FCC, 120 F.3d 753, 800.

<sup>64</sup>/Local Competition First Report, para. 1093.

<sup>65</sup>/Interconnection Agreements between Ameritech, Bell Atlantic and Sprint and Paging Networks operating companies, supra., notes 36-38; Interconnection Agreements between BellSouth and AirTouch Paging, supra., note 40.

<sup>66</sup>/AirTouch Washington Decision.

Yes. Paging companies are unable to compete on a level playing field since CMRS carriers who offer paging service over their two-way networks are able to receive higher terminating compensation payments for the paging traffic they terminate, and, due to the symmetry requirement, are in a position to reach agreement on the rate at an earlier date. This disparity cannot be solved by having the two-way CMRS carriers be paid less for a call that terminates as a page than a call that terminates as a mobile call since the network cannot distinguish between these two types of communications. Singling paging companies out for disparate treatment also deters voluntary negotiations between LECs and paging companies. At this time, only the largest paging companies have successfully reached interconnection agreements with only some LECs. Some of those agreements were reached only after initiation of arbitration proceedings. Most paging carriers do not have the resources necessary to undertake the proceedings required and therefore are not able to realize their rights under the 1996 Act. Similar treatment of paging carriers would remedy much of this problem.

**57. Do paging carriers really “switch” telecommunications?**

Yes. This Commission, several state commissions, and federal courts have concluded correctly that paging carriers switch telecommunications and therefore are entitled to termination compensation.<sup>67</sup>

Notably, there are many forms of switching (*e.g.*, circuit switching, message switching, packet switching, etc.). The common element in all these types of switching is that a telecommunications carrier performs various call processing and routing functions in order to deliver the call to the called party. Paging switches provide answer supervision, perform call validation functions, provide message prompts, generate appropriate transport protocols with routing instructions, subscriber unit identification and message content, and perform various batching, formatting and disaggregation functions to deliver calls to the called party. These are the functional equivalent of end office switching within the meaning of Sections 51.701(c) and (d) of the rules which define “transport” and “termination.”

**58. Are there any circumstances in which paging carriers should be considered to be performing the equivalent of tandem switching as compared to end office switching?**

Yes. The proper determinant of whether an interconnecting carrier’s switch should be considered the functional equivalent of a tandem as compared to an end office is the geographic area that the switch serves. Specifically, if the competing carrier is switching calls throughout an area that equates in size to that of a LEC end office, then its switching should be deemed the functional equivalent of an end office switch. If, on the other hand, the competing carrier is switching calls throughout a larger geographic area that better equates to the LEC’s tandem service area, then the competing carrier’s switching should be deemed the functional equivalent of a tandem switch.<sup>68</sup>

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<sup>67</sup>Local Competition First Report, paras. 1008, 1092; *see also*, n. 3, *supra*.

<sup>68</sup>Local Competition First Report and Order, at para. 1090.

## **XI. Types of Interconnection Arrangements**

- 59. What are the differences between so-called "Type 1" and "Type 2" interconnection arrangements in the LEC/paging context?**

Type 1 provides an interconnection to the telephone company's end office ("EO"). The telephone numbers reside at the EO. Type 2 provides an interconnection to the telephone company's Tandem. In this configuration, the telephone numbers reside at the paging company's switch.

- 60. Does the paging carrier perform any switching functions in a Type 1/End Office interconnection arrangement?**

Yes. Notwithstanding the type of interconnection arrangement the paging carrier has, the paging carrier is required to perform the same switching functions with respect to a call in order to terminate that call to the called party.

- 61. Why would a paging company opt for Type 1/End Office interconnection as compared to Type 2/Tandem interconnection?**

Historically, the nature of the interconnection arrangement was dictated by LEC policies over which paging companies had no control. Many EO arrangements were established when LECs simply refused to offer Tandem level interconnection<sup>69</sup> to paging companies. Even when Tandem interconnection was offered, the terms often made it prohibitively expensive. A paging carrier establishing a Tandem level interconnection must use a complete NXX code (10,000 numbers), and it was commonplace for LECs to charge exorbitant one-time and monthly recurring charges for each number in this large block.<sup>70</sup> In contrast, numbers in EO arrangements could be purchased in blocks of 100, thereby reducing (but not eliminating) the paging companies' obligation. Also, the shortage of telephone numbers in some areas can mean that the full NXX codes necessary to implement Tandem connections are not available.

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<sup>69</sup>The recent decision in William G. Bowles Jr. PE v. United Telephone Company of Missouri, DA 97-1441, 1997 FCC LEXIS 3662, released July 11, 1997 indicates that these restrictive policies still exist.

<sup>70</sup>For example, a one-time charge of \$36,000 per NXX was imposed in some instances.

- 62. Now that number charges have been eliminated or reduced by the Local Competition Second Report, why don't paging companies convert all existing interconnection arrangements to Type 2/Tandem level?**

Not all LECs have reduced their number-related charges as they are obligated to do under the FCC rulings. Even more important, converting existing services from an EO to a Tandem level arrangement would require that each paging customer relinquish its existing telephone number and substitute a number within the range of the new dedicated NXX assigned to the paging carrier. Like other telecommunications customers, paging customers generally do not want to relinquish a paging number that has been distributed, published or advertised to callers and become familiar to those who seek to initiate pages. Many paging companies are negotiating transition plans with LECs that will replace EO connections with Tandem connections over time, but it will take some time to effect these transitions without disrupting existing services. Carriers also are exploring the possibility of using local number portability technology to port telephone numbers from EOs to LEC Tandems to achieve an interconnection arrangement in a Type 2 configuration. In the meantime, paging carriers should not be required to pay for the LEC facilities used to deliver local, LEC-originated traffic and should not be denied terminating compensation payments to which they are entitled.

- 63. Should the Commission's rules governing the financial relationship between paging service providers and LECs depend upon whether the interconnection is Type 1/End Office or Type 2/Tandem?**

No. The entitlement to termination compensation is based upon the fact that paging carriers terminate calls and incur costs in such termination. The amount of compensation is based upon the terminating carrier's (*i.e.*, the paging carrier's) costs of terminating the telecommunications. The functions performed by paging carriers are identical in both the Type 1 and Type 2 context. Thus, the paging carrier's costs of terminating Type 1 and Type 2 calls do not differ. Consequently, neither should the compensation.

Further, because paging companies became locked into EO arrangements by now-discredited LEC policies, and altering them would disrupt service to the public, the paging companies should not be forced to pay for the LECs' connecting facilities or relinquish the right to terminating compensation in order to maintain existing arrangements.

- 64. Is a “reverse billing” arrangement by which a paging carrier agrees to pay certain charges to the LEC so that the paging carrier’s end users will not incur toll charges properly considered a form of interconnection which is subject to statutory protections?**

Yes. Though often characterized by LECs as a mere “billing option,” a reverse billing arrangement has direct consequences in terms of the manner in which physical interconnections are configured, and the alteration or withdrawal by a LEC of reverse billing options can have direct adverse consequences on interconnection arrangements. As a result, actions taken by LECs with regard to reverse billing offerings are so inextricably tied to the interconnection arrangement as to be subject to the same standards.

- 65. Are there any Commission precedents that require Type 1/End Office interconnections to be treated less favorably than Type 2/Tandem interconnections?**

No. There is language in a couple of pre-1996 Act decisions that equates a Type 1/End Office interconnection to a connection with a private branch exchange (“PBX”), which has been seized upon by certain LECs to argue that paging companies should be treated as end users to the extent that they utilize Type 1 arrangements. These isolated references do not overcome the long line of holdings indicating that paging carriers are entitled to co-carrier treatment. Considerations of functionality, fairness and proper statutory interpretation prevent the Commission from treating a paging carrier like a PBX.

## **XII. Dedicated Transport Facilities Between Serving Areas**

- 66. What is a foreign exchange or “FX” line?**

An FX line is a dedicated facility that allows a call in one calling area to be transported to another calling area.

- 67. Do paging companies use FX lines?**

In the past, LECs refused to treat paging companies as co-carriers and forced them to order FX lines out of end-user tariffs whenever the paging company wanted to draw telephone numbers out of an exchange other than the exchange where the paging switch (and POI) was located. For example, if a paging system expanded to cover multiple calling areas, situations would arise in which calls to pagers which originated and terminated in the same local calling area would give rise to intrastate toll charges if the customers’ numbers were rated elsewhere. To overcome this anomaly, some paging carriers ordered FX lines to enable them to draw

telephone numbers out of other exchanges, and to assign a telephone number to the paging customer that correlates to the area where most of the calls to that customer will originate and terminate.

Under the new interconnection paradigm, paging carriers are to be considered co-carriers, not end-users. Rather than being forced to order FX lines under end-user tariffs, they must be allowed to utilize dedicated co-carrier transport facilities.

**68. Does the use of dedicated transport facilities between a LEC and a paging carrier unfairly prevent the LEC from collecting intraLATA toll charges to which it is entitled?**

No. As noted above, the typical effect of the use of a dedicated connecting facility is to avoid the imposition of a toll charge when a paging communication in fact originates and terminates in the same local serving area. This is equitable. For example, if a paging carrier which interconnects in San Francisco uses a dedicated facility to draw numbers out of a Eureka exchange and assigns a Eureka number to a Eureka-based paging customer, no toll would be incurred if a Eureka landline customer calls that number. However, a San Francisco area landline customer who calls the Eureka number would pay a toll. As such, toll charges would be paid to the LEC only when the call originated and terminated in different local calling areas, which is the way it should be.

**69. Are LECs obligated to bear the costs of dedicated facilities used to deliver traffic to paging carriers in other exchanges within the MTA?**

In some instances, yes. If a paging company were to install a dedicated switch in the foreign exchange and interconnect there, the LEC would be obligated to make terminating compensation payments sufficient to allow the paging carrier to recoup the resulting switching costs. If it is more cost-effective to provide an equivalent service in the foreign exchange by using a dedicated connecting facility, then it is to the benefit of both the paging carrier and the LEC to do so. At this point, the cost of the dedicated facility becomes a substitute for the switching cost, which is properly charged to the LEC. Thus, it is appropriate for the LEC to bear the cost of the connecting facility provided that the lines represent an economically efficient means of serving the foreign exchange area.

**70. Are there alternatives to the use of dedicated transport facilities between carriers?**

Yes. LECs can provide a Tandem level interconnection arrangement by which calls to certain designated blocks of numbers are all routed via the tandem to the paging company switch but are rated out of a different LEC EO which subtends the tandem. This separation of rating and

routing would allow the paging company to assign a customer a number rated out of the nearest EO without the use of a dedicated transport facility. Instead the call would be routed over the LEC's common inter-office transport facilities. At least one state public utility commission has ruled that the LEC should separate rating and routing in this fashion, in order to achieve technical and economic efficiencies.<sup>71</sup>

**71. Is the separation of rating and routing in this fashion new?**

No. LECs have long had the ability to rate and route calls separately, and many existing interconnection agreements explicitly recognize the right of the requesting carrier to select a rating point for a particular telephone number that is different from the routing location, provided that they are in the same LATA.

### **XIII. Future Regulatory Rulings**

**72. Does the fact that both paging carriers and ISPs generally receive traffic but do not originate traffic require that the traffic directed to each be treated the same for compensation purposes?**

No. There are significant differences between paging carriers and ISPs that may properly result in different treatment of the traffic to each. Paging service providers are telecommunications carriers and exchange co-carriers with all of the regulatory obligations that attend those classifications. In contrast, ISPs have been specifically exempted from classification as telecommunications carriers,<sup>72</sup> and the FCC repeatedly has ruled that ISPs are to be treated as "end-users" for regulatory purposes. This distinction can serve to alter rights to compensation.<sup>73</sup> Additionally, a paging message terminates at a specific location which can be characterized as being either local or non-local. A call to an ISP enters the "Internet cloud" which means that the point of termination of the communication defies easy

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<sup>71</sup>Petition for Arbitration of an Interconnection Agreement Between AirTouch Paging and US WEST Communications, Inc., Docket No. UT-990300 (WA UTC 1999) (Arbitrator's Report and Decision).

<sup>72</sup>Local Competition First Report at para. 995.

<sup>73</sup>For example, when a call involves a pager, the paging company is the terminating carrier. When a call involves an Internet user, the LEC or competitive LEC serving the ISP, not the ISP, is the terminating carrier.



categorization in terms of locality. In light of these significant differences, the Commission need not treat traffic to paging companies and ISPs in identical fashion.

**73. What should the Commission do on reconsideration in the paging interconnection proceeding?**

The Commission should: (a) affirm its prior rulings regarding the basic entitlement of paging carriers to reciprocal compensation; (b) confirm the obligation of LECs to bear the usage sensitive and non-usage sensitive costs associated with the delivery of LEC-originated traffic to paging companies for local termination; and (c) abandon forevermore the rule which singles paging companies out as the only CMRS carriers obligated to perform their own Total Element Long Run Incremental Cost ("TELRIC") studies in order to receive terminating compensation.

**74. What other actions should the Commission take to resolve paging/LEC interconnection issues?**

The Commission should exercise the full limit of its jurisdiction under Section 332 of the Communications Act and establish a federal forum for setting the rates that CMRS carriers charge LECs for terminating traffic. Since the states are preempted under Section 332 of the Communications Act from regulating CMRS rates, and since the charge imposed by a paging carrier on a LEC for termination service is a CMRS rate, it should be deemed within the exclusive domain of the FCC.

Also, the Commission should act promptly to adopt rules or policies confirming carriers' rights under Section 252 (i) of the 1996 Act. These rights are critical to the achievement of fair interconnection arrangements between LECs and paging carriers, particularly in light of the current disparate treatment to which paging carriers are subject in the context of reciprocal compensation. Paging carriers have experienced difficulties in exercising their Section 252(i) rights. LECs have interposed delay in responding to requests to adopt previously negotiated agreements, have attempted to modify prior agreements when providing them to subsequent carriers, and have out and out rejected paging carrier requests to adopt *in toto* previously approved agreements.<sup>74</sup> Swift Commission action affirming carriers' rights under Section 252(i) and supporting flexibility in the exercise of those rights will go a long way to rectifying the current difficulties carriers are experiencing.

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<sup>74</sup>Such refusals were the subject of litigation between AirTouch Paging and Pacific Bell (in federal court in California) and BellSouth (in federal court in Georgia).

The recent Supreme Court unconditional affirmation of the Commission's jurisdiction over interconnection issues demonstrates that Commission action in this regard is appropriate.

**Index****-A-****Arbitration**

- Under Section 252 of the Act . . . . Q.29

**Appeal**

- of the Local Competition First Report to the Eighth Circuit . . . . . Q.37,Q.38
- of the Local Competition First Report to the Supreme Court . . . . . Q.17

**-B-****Benefits**

- to LECs of serving paging carriers . . . . . Q.28

**Bill and Keep**

- opposed by the LECs . . . . . Q.36

**-C-****Chilling effect**

- of requiring cost studies . . . . . Q.54

**Commercial Mobile Radio Service (CMRS)**

- as a Telecommunications Service . . . Q.4
- paging service as . . . . . Q.4

**Co-Carriers**

- paging service providers as . . . . . Q.5,Q.9,Q.27,Q.65

**Competition**

- between one-way and two-way companies . . . . . Q.54,Q.55,Q.56

**Cost causers**

- FCC and state rulings regarding . . . Q.21
- in the paging context . . . . . Q.22
- LEC customers as . . . . . Q.21
- selective distribution of telephone numbers . . . . . Q.23

**Cost studies**

- as a prerequisite to compensation . . Q.54

**Customer Proprietary Network****Information (CPNI)**

- obligation of paging carriers to protect . . . . . Q.3

**-D-****Dedicated Facilities**

- cost of . . . . . Q.68
- FX lines as . . . . . Q.66
- use of . . . . . Q.67

**Definitions**

- of Commercial Mobile Radio Service . . . . . Q.3
- of CPNI . . . . . Q.3
- of End Office interconnection . . . . Q.59
- of FX lines . . . . . Q.66
- of LEC-originated traffic . . . . . Q.32
- of local traffic . . . . . Q.18,Q.19
- of one way messaging . . . . . Q.1
- of paging service provider . . . . . Q.1
- of point of connection (POC) or point of interface (POI) . . . . . Q.48
- of reciprocal compensation . . . . . Q.35
- of Tandem level interconnection . . . Q.59
- of telecommunications carrier . . . . Q.2
- of telephone exchange service . . . . Q.5
- of Type 1 interconnection . . . . . Q.59
- of Type 2 interconnection . . . . . Q.59

**Discrimination**

- between payments to one-way and two-way providers . . . . . Q.56
- by LECs against paging carriers . . . Q.9

**-E-****End Office (Type 1) Interconnection**

- defined ..... Q.59
- effect of numbering charges on ... Q.61
- reasons for continuing ..... Q.62
- converting to Type 2 ..... Q.62

**-F-****Facilities Charges**

- entitlement of paging carriers to relief from ..... Q.9,Q.21
- extent of relief ..... Q.24,Q.32

**Federal Communications Commission**

- as arbiter of terminating compensation .. Q.14,Q.40,Q.73,Q.74
- jurisdiction over intrastate charges ..... Q.10,Q.13
- preemptive authority of ..... Q.12

**Fixed Costs**

- recovery of ..... Q.39

**Foreign Exchange (FX) Lines**

- defined ..... Q.66
- purpose of ..... Q.67
- replacement of ..... Q.68

**-G-****Good Faith Estimate**

- as a basis for ascertaining local traffic ..... Q.19

**Good Faith Negotiations**

- Section 252 request as a prerequisite to ..... Q.29,Q.41

**-H-****Historical Reasons**

- for selecting Type 1 interconnection ..... Q.61

**Historical Relationship**

- between LECs and paging carriers ..... Q.21

**-I-****Incentive**

- to configure efficient network .... Q.26

**Interconnection**

- End Office (Type 1) ..... Q.59
- obligations of paging carriers ..... Q.3
- rights of paging carriers to .... Q.7,Q.8
- rights prior to the 1996 Act ..... Q.7
- tandem level (Type 2) ..... Q.59,Q.62
- type 1 (end office) ..... Q.59
- type 2 (tandem level) ..... Q.59,Q.62
- under Sections 201/202 of the Act . Q.7
- under Sections 251/252 of the Act . Q.8
- under Section 332 of the Act ..... Q.7

**Internet Service Providers (ISPs)**

- compared to paging service providers ..... Q.72
- ISP traffic distinguished from paging traffic ..... Q.20

**-J-****Jurisdiction**

- FCC exercise of ..... Q.13,Q.14
- of FCC over intrastate interconnection ..... Q.10,Q.74
- of states preempted ..... Q.13

**-K-****-L-****LATAs**

- inter-LATA interconnection restrictions ..... Q.30,Q.31

**LEC-Originated Traffic**

- burden of proof regarding percentage ..... Q.33
- defined ..... Q.32

- local ..... Q.13,Q.18
- obligation of paging carriers regarding ..... Q.26
- Local Competition First Report**
  - appeals of the ..... Q.37
  - citation ..... Q.2
  - effective date of ..... Q.15
  - preemptive effect of ..... Q.13
  - statutory basis of ..... Q.12
  - upheld on appeal ..... Q.16
- Local Exchange Carriers (LECs)**
  - ability to assess charges for facilities ..... Q.13
  - obligation to interconnect ..... Q.7,Q.8,Q.11
  - obligation to pay compensation ..... Q.7,Q.34
  - record of compliance ..... Q.9
- Local Number Portability Fund**
  - duty to contribute ..... Q.3
- Local Service**
  - defined ..... Q.18
- Local Traffic**
  - ascertaining the extent of ..... Q.19
  - defined ..... Q.13
  - treatment in interconnection agreements ..... Q.20
- M-**
- Mediation**
  - Under Section 251/252 of the Act ..... Q.29
- Metzger Letter**
  - cited ..... Q.24
  - effect of the ..... Q.24
- Mid-Sized Incumbent LECs**
  - appeal of the Local Competition First Report by ..... Q.38
- Minimum Requirements**
  - under sections 251/252 of the Act ..... Q.29
- Modification of Final Judgment (MFJ)**
  - effect on LEC obligations ..... Q.5
- Most-Favored-Nation Rights**
  - invocation of rights during term of agreement ..... Q.43
  - need for swift FCC action ..... Q.74
  - paging carrier entitlement to ..... Q.42
  - resolution of disputes ..... Q.44
  - rights created by Section 252(i) .. Q.42
  - term of agreement ..... Q.45,Q.46
  - termination compensation as part of agreement ..... Q.47
- Mutual compensation**
  - entitlement of paging carriers to receive ..... Q.34
- N-**
- Negotiations**
  - good faith obligation ..... Q.11
  - formal request as a prerequisite to ..... Q.29,Q.41
- Network Architecture**
  - of one-way and two-way carriers compared ..... Q.55
  - right of LEC to alter ..... Q.27
  - right of LEC to dictate ..... Q.27
- Non-Traffic Sensitive Facility Costs**
  - relief of paging carriers from paying ..... Q.24
- North American Numbering Plan Administration Fund**
  - duty to contribute ..... Q.3
- Numbering Charges**
  - impact on interconnection type ... Q.61
  - reduction by federal mandate .... Q.13
- O-**
- One-Way Messaging**

- as telephone exchange service . . . . Q.5
- as local service . . . . . Q.18
- compared to Internet service Q.20,Q.71
- defined . . . . . Q.1
- entitlement to reciprocal compensation . . . . . Q.34,Q.37,Q.38
- Originating Carrier**
  - obligation to pay for facilities . . . . Q.23
  - obligation to pay compensation . . . Q.21
- P-**
- Paging Service**
  - as CMRS . . . . . Q.4
  - defined . . . . . Q.1
  - one call versus two calls . . . . . Q.52
- Point of Connection (POC) or Point of Interface (POI)**
  - defined . . . . . Q.48
  - location of . . . . . Q.48
  - effect of relocating . . . . . Q.50
  - effect on transport . . . . . Q.51
- Preemption**
  - of conflicting state tariffs . . . Q.12,Q.13
  - under the Supremacy Clause . . . . Q.12
- Private Branch Exchange (PBX)**
  - comparison of paging carrier to . . Q.65
- Q-**
- R-**
- Radio Frequency (RF) Network**
  - as the wireless local loop . . . . . Q.39
  - entitlement to recover costs for . . Q.39
- Rating and Routing**
  - distinguished . . . . . Q.70
  - separation of . . . . . Q.71
- Reciprocal Compensation**
  - defined . . . . . Q.35
- effect of Type 1 versus Type 2 interconnection on . . . . . Q.63
- entitlement of paging carriers to receive . . . . . Q.34
- exempt traffic . . . . . Q.33
- forum for establishing rates . . . . Q.40
- parity between paging and other CMRS providers . . . . . Q.55
- Reconsideration**
  - by the FCC of the First Report . . Q.73
- Reverse Billing**
  - as an interconnection arrangement Q.64
  - defined . . . . . Q.64
- S-**
- Sections 201/202 of the Act**
  - interconnection rights created by . . Q.7
- Sections 251/252 of the Act**
  - interconnection rights created by . . Q.8
- Section 252(i)**
  - invocation of rights during term of agreement . . . . . Q.43
  - need for swift FCC action . . . . . Q.74
  - paging carrier entitlement to . . . . Q.42
  - resolution of disputes . . . . . Q.44
  - rights created by . . . . . Q.42
  - term of agreement . . . . . Q.45,Q.46
  - termination compensation as part of agreement . . . . . Q.47
- Sections 332 of the Act**
  - interconnection rights created by . . Q.7
- Section 51.703 of the FCC Rules**
  - effective date . . . . . Q.15
  - interconnection rights created by . . Q.13
- State Commissions**
  - affirmation of paging carrier status as co-carriers . . . . . Q.9
  - rulings on relief from facilities charges . . . . . Q.9

- rulings on termination compensation .....	Q.9
<b>State Regulation</b>	
- of CMRS rates and entry .....	Q.74
- preempted .....	Q.13, Q.14
<b>Supremacy Clause</b>	
- preemption under the .....	Q.12
<b>Supreme Court</b>	
- review of the Local Competition First Report .....	Q.10, Q.17
<b>Switching Functions</b>	
- end office switching by paging carriers .....	Q.57
- in an end office (Type 1) interconnection .....	Q.60
- in a tandem (Type 2) interconnection .....	Q.53
- paging carrier performance of .....	Q.57
- state commission rulings .....	Q.53
- tandem switching functions performed by paging carriers .....	Q.58
 -T-	
<b>Tandem Level (Type 2) Interconnection</b>	
- defined .....	Q.59
- effect of converting from Type 1 ..	Q.62
- separation of rating and routing with .....	Q.70
- use of LNP to convert from Type 1 .....	Q.62
<b>Telecommunications Act</b>	
- citation .....	Q.1
- of 1996 .....	Q.5
<b>Telecommunications Carrier</b>	
- obligations of .....	Q.3
- defined .....	Q.2
- paging carrier as .....	Q.2
<b>Telecommunications Relay Services Fund</b>	
- obligation to contribute .....	Q.3

<b>Telecommunications Service</b>	
- defined .....	Q.2
<b>Telephone Exchange Service</b>	
- paging carriers as providers of .....	Q.5
- defined .....	Q.5
<b>Terminating Compensation</b>	
- entitlement of paging carrier to receive .....	Q.7, Q.9
- request to negotiate as a prerequisite .....	Q.41
- reciprocal/mutual defined .....	Q.35
<b>Toll Revenues</b>	
- impact of FX lines on .....	Q.67
- LEC entitlement to intra-LATA toll .....	Q.67
<b>Traffic Flow</b>	
- effect of imbalance on compensation .....	Q.36
<b>Traffic Sensitive Facility Costs</b>	
- relief of paging carriers from paying .....	Q.24
<b>Type 1 (End Office) Interconnection</b>	
- defined .....	Q.59
- effect of numbering charges on ...	Q.61
- reasons for continuing .....	Q.62
- converting to Type 2 .....	Q.62
<b>Type 2 (Tandem Level) Interconnection</b>	
- defined .....	Q.59
- separation of rating and routing with .....	Q.73
- effect of converting from Type 1 ..	Q.62
 -U-	
<b>Unbundling</b>	
- rating and routing separation .....	Q.73
<b>Uneven Traffic Flow</b>	
- effect on compensation .....	Q.36
<b>Universal Service Fund</b>	
- obligation of paging carriers to	

contribute ..... Q.3

-V-

-W-

**Wide Area Systems**

- local service over ..... Q.18

-X-

-Y-

-Z-